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June 2, 2009

Arizona Corporation Commission
Docket Control
1200 W Washington Street
Phoenix, AZ 85007

RE: Comments of EnerNOC, Inc. in the Docket for the Investigation of Regulatory and Rate Incentives for Gas & Electric Utilities.

DOCKET No. E-00000J-08-0314/G-00000c-08-0314

EnerNOC, Inc., respectfully submits the attached comments in the investigation of Regulatory and Rate Incentives for Gas & Electric Utilities.

I hereby certify that 13 copies of this Notice of Intervention have been mailed to the docket office and to the parties of record in this docket.

Sincerely,

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CC: Arizona Corporation Commission (13)
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Parties of Record

Arizona Corporation Commission
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COPY of the foregoing was mailed on
this 2nd day of June, 2009, to:

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**COMMENTS OF ENERNOC, INC. REGARDING PROPOSED RULES IN
E-00000J-03-0314/G-00000C-08-0314**

EnerNOC appreciates the opportunity to submit comments to the Arizona Corporation Commission ("ACC") in advance of the release of the proposed rules in this docket. EnerNOC also appreciates the Commission's consideration of establishing a demand response target or goal alongside an energy efficiency target. As discussed during the workshops, demand response provides many benefits from the security of the system, to deferring new investment, to providing protection to consumers from price spike during peak periods, to reducing emissions during peak periods.

There has been a great deal of activity of late on incorporating demand reduction goals as part of individual state's energy policies. The action has been undertaken both by regulatory and legislative bodies. In addition at the federal level, there is current and pending legislation that requires an examination of energy efficiency, including demand response. Under the Energy Independence and Security Act of 2007 (EISA) state commissions must complete their examination of aligning utility incentives for expanding energy efficiency programs, including demand response, by December 2009. Pending legislation (Waxman/Markey Bill), would require, among other things, peak load reduction targets to be adopted by each state.

The Corporation Commission is taking a prudent course by examining the information from other states, and the federal government in advance of determining Arizona's state energy conservation policies. However, with the information attached, there can be little doubt of the import that is being placed on both energy efficiency and demand reduction targets in many states and nationally.

ACC Workshop Proposals on Peak Load Reduction

In the course of discussion at the workshops, proposals were offered by both Arizona Public Service ("APS") and Unisource/Tucson Electric Power ("TEP") to incorporate demand response within the context of an energy efficiency goal. In other words, demand reductions would be translated into energy ("MWh") by virtue of a load factor adjustment. APS proposed that up to 3% of the 15% energy efficiency target could be comprised of demand response. TEP did not propose a specific percentage, but would make a subsequent proposal pending review.

EnerNOC expressed concern about converting demand reductions into energy and vice versa because these conversions may not produce real, measurable, and verifiable results. Conversions are always subject to challenge of the underlying assumptions. Further, the two types of energy conservation, energy efficiency and demand response, affect energy consumption or usage very differently. For the most part, energy efficiency measures reduce energy consumption in kilo-Watt-hours. Demand response reduces the peak demand. These are different components, different products and may not be easily exchanged for one another.

In EnerNOC's previous comments, it suggested a percentage reduction of current peak load of 0.5% per year, resulting in a total peak demand reduction in 2020 of 5%. In light of many of the state requirements, this target seems to be very consistent. Forecasts for the increase in the demand for electricity in Arizona indicate a significant growth over the next two decades. Certainly, demand response and energy efficiency can be used to blunt that growth.

Approaches to Designing a Peak Load Reduction Target

There are several ways to design a demand response target. The following is an illustrative list:

1. Based upon a percentage reduction of current peak load.
2. Based upon a percentage reduction of forecast peak load.
3. Based upon cost-effectiveness, wherein the utility could be required to acquire all cost effective energy efficiency and demand response.
4. Based upon a loading order, wherein all new energy and demand requirements will be met first through energy efficiency and demand response.
5. Based upon the results of pilot programs.

There are several considerations in adopting a demand reduction goal including how cost effectiveness will be determined and whether and to what extent should incentives be offered to utilities in order to give equal consideration to demand reductions as to supply-side options.

Program design for utility and/or aggregator demand response programs requires extensive input to ensure the programs are as successful as possible. Some of the parameters that need to be resolved in designing a program include: the program size, the number of hours that the demand resource will be available, is it a seasonal or annual program, how much notification will customers receive before they have to respond to the event, how long will the event last when called, is the program during business days and hours or is it any day and anytime? Who is eligible to participate? Are there penalties for non-performance? How is performance measured? How is the resource paid?

Contained in the comments below are references to regulatory actions taken in NM, CO, NY and CA, legislative actions taken in NM, CO, PA, OH, and VA. Lastly, there is reference to the Waxman/Markey Bill that is pending in Congress as well as the PURPA regulations emanating from the Energy Independence and Security Act of 2007. EnerNOC hopes the ACC will carefully consider the many various means in which states have adopted demand reduction policies and adopt a policy that is most suitable for Arizona.

STATE REGULATIONS/DECISIONS RELATIVE TO DEMAND RESPONSE GOALS/TARGETS

NMPRC Case No.08-00024-UT, RULEMAKING TO IMPLEMENT THE EFFICIENT USE OF ENERGY ACT

Process to develop the rules in support of The Efficient Use of Energy Act.

17.7.2.16 ALTERNATIVE ENERGY EFFICIENCY PROVIDERS:

A. With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility. The alternative energy efficiency provider shall assume all responsibilities of the utility to provide approved energy efficiency and load management program to the utility's customers, including all filing and reporting requirements.

COLORADO PUBLIC UTILITIES COMMISSION DECISION

Decision C-08-0369, March 2008

In this case Public Service of Colorado (PSCo) brought forward an expedited request for approval for two new peaking facilities. In its order, the CO PUC approved the request, but expressed its frustration at not being offered alternatives, including enhanced DSM, to the proposed peaking projects. As a result, the CO PUC ordered PSCo to incorporate DSM, including third-party aggregators, to reduce its expected power purchase requirements for 2009.

59. We find that the existing DSM, ISOC and Saver's Switch programs, as well as a new third-party aggregation DR program, can be used to offset a portion of the anticipated imported electric energy and capacity needed to meet the peak loads and reserve margins, and that it may be less costly than short-term power purchases. We direct Public Service to start now to fully utilize existing DSM capabilities and expand existing programs with the goal of eliminating as much as feasible of the 123MW of projected purchase power for the summer 2009. With a proper focus on the performance of these programs, the Commission hopes and expects that the purchased power necessary to augment the application for summer of 2009 can be significantly less than 123MW.

60. Regarding specific demand response strategies, Public Service is hereby directed to issue by July 1, 2008 a Request for Proposals (RFP) to retain one or more third party demand response aggregators for its Colorado service territory. The Commission expects a meaningful effort by Public Service that will yield a significant increase in interruptible load commitments. In line with the testimony of Company witness Mr. Stoffel and other record evidence, it appears reasonable to expect such a demand-response program to yield at least 20MW by the summer of 2009.

Decision C08-0560, June 2008

This decision establishes DSM targets for PSCo for 2009-2010 as well as through 2020. While the Colorado PUC did not adopt explicit demand reduction targets, they developed a range of demand reduction targets that would be associated with energy efficiency reductions.

61. Public Service proposed in its Enhanced DSM Plan demand savings goals for 2009 and 2010 (associated with DSM programs and not including Saver's Switch and ISOC) of 36 MW and 48 MW, respectively. Consistent with the energy goals we established in paragraph 51, we find that the 2009 demand goal of 36 MW proposed by Public Service is reasonable and should be incorporated into the biennial plan filed later this year. For 2010, we find that the demand goal shall be set at 110 percent of the goal proposed by Public Service, which equals 53 MW, consistent with the 2010 energy savings goal set forth in paragraph 47.

62. For the purpose of conveying DSM parameters for the ERP modeling, we find that the demand-to-energy ratios represented by the data in Public Service Exhibit DLS-3 can reasonably be applied to the DSM energy range set forth in paragraph 51. Applying the demand energy ratios in the two scenarios to the 3,669 GWh quantity set forth as the 2020 DSM energy target yields a demand savings range of 886 – 994 MW. For the period 2009-2015, the cumulative of the GWh values in paragraph 51 is 1,744 GWh. Applying these same ratios to that GWh value yields a demand savings range of 421 to 449 MW. We hold that this range of demand savings values shall be used in the ERP docket for modeling.

CALIFORNIA PUBLIC UTILITIES COMMISSION (JOINT AGENCIES) ENERGY ACTION PLAN, May 2003

The CPUC, alongside the California Energy Commission, The Energy Oversight Board (while in existence) and the California ISO adopted the Energy Action Plan in 2003 and continued to meet and revise the policy over time. It is used as a roadmap for guiding future energy policy actions with the primary emphasis of reducing demand and consumption, increasing renewable resources, improving system reliability and enhancing transmission and distribution capabilities. In 2003, there were six primary action items of which, energy efficiency and demand response was number one.

1. Optimize Energy Conservation and Resource Efficiency

California should decrease its per capita electricity use through increased energy conservation and efficiency measures. This would minimize the need for new generation, reduce emissions of toxic and criteria pollutants and greenhouse gases, avoid environmental concerns, improve energy reliability and contribute to price stability. Optimizing conservation and resource efficiency will include the following specific actions:

1. Implement a voluntary dynamic pricing system to reduce peak demand by as much as 1,500 to 2,000 megawatts by 2007.¹

2. Improve new and remodeled building efficiency by 5 percent.²
3. Improve air conditioner efficiency by 10 percent above federally mandated standards.³
4. Make every new state building a model of energy efficiency.
5. Create customer incentives for aggressive energy demand reduction.
6. Provide utilities with demand response and energy efficiency investment rewards comparable to the return on investment in new power and transmission projects.
7. Increase local government conservation and energy efficiency programs.
8. Incorporate, as appropriate per Public Resources Code section 25402, distributed generation or renewable technologies into energy efficiency standards for new building construction.
9. Encourage companies that invest in energy conservation and resource efficiency to register with the state's Climate Change Registry.

Energy Action Plan II, October 2005

EAP II continues the strong support for the loading order - endorsed by Governor Schwarzenegger - that describes the priority sequence for actions to address increasing energy needs. The loading order identifies energy efficiency and demand response as the State's preferred means of meeting growing energy needs. After cost-effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation. Concurrently, the bulk electricity transmission grid and distribution facility infrastructure must be improved to support growing demand centers and the interconnection of new generation, both on the utility and customer side of the meter.

KEY ACTIONS:

1. Require that all cost-effective energy efficiency is integrated into utilities' resource plans on an equal basis with supply-side resource options.
2. Adopt 2006-2008 energy efficiency program portfolios and funding by late 2005.
3. Expand efforts to improve public awareness and adoption of energy efficiency measures.
4. Promote a balanced portfolio of baseload energy, demand, and peak demand reductions to obtain both reliability and long-term resource benefits of energy efficiency for both electricity and natural gas.
5. Integrate demand response programs with energy efficiency programs....

NEW YORK PUBLIC SERVICE COMMISSION ORDER

CASE 09-E-0115 Consider Demand Response Initiatives, February 2009

Within 90 days of the issuance of this Order, Consolidated Edison of New York, Inc. is directed to file a report with the Secretary to the Commission. The report should include the following as related to the Company's service territory, particularly that which is comprised of NYISO Zone J:

1. An assessment of the potential for cost-effective demand response, and a proposed demand response goal for Summer 2015 and goals for intervening years (all incremental to current EEPS proceeding related goals).

EEPS= Energy Efficiency Portfolio Standard

On June 1, ConEd submitted its compliance filing. Through a retained consultant, a potential study for DR was performed. The study found that in 2008, there was 569 MW available for potential load reductions; however, the potential for load reduction from the study was 1,384 MWs, roughly 9% of the system peak. Taking into consideration a 71% realization rate, the achievable demand reduction amount was 1,038 MWs, an increase of nearly 800 MWs over current enrollments.

ConEd has proposed 4 pilot programs that will be called when the day-ahead system demand is within 92.5% of the system peak. Aggregators and customers are permitted to participate.

STATE LEGISLATION ESTABLISHING A DEMAND RESPONSE TARGET

New Mexico, The Efficient Use of Energy Act

62-17-3. Policy.

It is the policy of the Efficient Use of Energy Act...that public utilities, distribution cooperative utilities and municipal utilities include **all cost-effective energy efficiency and load management programs in their energy resource portfolios** [emphasis added], that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests and that the commission provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resources that, with satisfactory program performance, **is financially more attractive to the utility than supply-side resources.**

62-17-10. Integrated resource planning.

Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers...Nothing in the section shall prohibit public utilities from implementing cost-effective energy efficiency programs and load management programs prior to the commission establishing rules and guidelines for integrated resource planning...

Colorado, HB 07-1037

Section 40-3.2-104

2) The commission shall establish energy savings and peak demand reduction goals to be achieved by an investor-owned electric utility, taking into account the utility's cost-effective DSM potential, the need for electricity resources, the benefits of DSM investments, and other factors as determined by the commission. The energy savings and peak demand reduction goals shall be at least **five percent of the utility's retail system peak demand measured in megawatts in the base year and at least five percent of the utility's retail energy sales measured in megawatt-hours in the base year.** The base year shall be 2006. The goals shall be met in 2018, counting savings in 2018 from DSM measures installed starting in 2006...

5) The commission shall allow an opportunity for a utility's investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives....

a. An incentive to allow a rate of return on DSM investments higher than the utility's rate of return on other investments;

b. An incentive to allow the utility to accelerate the depreciation or amortization period for DSM investments;

c. An incentive to allow the utility to retain a portion of the net economic benefits associated with a DSM program for its shareholders;

d. An incentive to allow the utility to collect the costs of DSM programs through a cost adjustment clause;

e. Other incentive mechanisms that the commission deems appropriate.

Pennsylvania HB2200, 2008

The bill requires all PA Electric Distribution Companies (EDCs) to pursue energy efficiency and peak demand reduction targets:

By May 31, 2013, the weather normalized demand of each EDC's retail electric customers during 100 hours of highest demand must be reduced by 4.5%. Reduction will be measured against peak demand for FY 2008 (ended May 31, 2008). EDCs are required to file their EE and conservation plans by July 1, 2009 with the PUC.

Ohio SB 221, 2008

Utilities are required to implement peak demand reduction programs to achieve reduction in peak of 1% beginning in 2009, escalating by 0.75% each year through 2018 relative to the average peak demand in the preceding three years.

Virginia SB 1348, 2009

Directs the state commission to determine achievable, cost-effective energy conservation and demand response targets that can be accomplished through demand-side management portfolios. The state commission is required to report to the Governor and the General Assembly by November 15, 2009.

PENDING FEDERAL LEGISLATION AND PURPA REGULATIONS

Waxman/Markey-Clean Energy Bill, Pending

Section 231 under Title 2: Energy Efficiency Resource Standard for Retail Electricity and Natural Gas Distributors

The Bill sets electricity demand savings for each year 2012-2020, applicable to all but the smallest utilities, with a 15% in electricity demand by 2020.

FERC Order 719, 2008

While Arizona does not participate in an organized wholesale market, the implication of FERC Order 719 still has some important conclusions that are relevant as to treating demand resources on a comparable basis to supply-side resources.

Energy Independence and Security Act (EISA), 2007

Section 532 PURPA 111.d. 17.

- A. Align utility incentives with the delivery of cost-effective energy efficiency...
- B. In complying with A, each state regulatory authority shall ... consider demand response programs.

Section 1307 PURPA 111.d.17.

- Each state regulatory authority shall consider smart grid investments, wherein the definition of smart grid includes demand response.

By December 19, 2009, state commissions are to have completed their assessment and determined whether or not to adopt the standards. If not considered by December 19, 2010, then in the next utility rate case